

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIRK LANGE, ANDREAS TAUTZ, and CHRISTIAN MALETZKI

Appeal No. 2003-1220
Application No. 09/830,420

HEARD: NOVEMBER 19, 2003

Before KRASS, RUGGIERO, and DIXON, Administrative Patent Judges.
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 14-30, which are all of the claims pending in the present application. Claims 1-13 have been canceled.

The claimed invention relates to a method and apparatus for disconnecting a passenger conveying system in which functional units of the passenger conveying system are monitored with switching elements to detect malfunctions. Signals from the switching elements are combined to form a safety chain and are

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supplied along with drive monitoring unit signals to a pilot control unit. On detection of an error by the safety chain or drive monitoring unit switching elements, a shutdown signal is supplied to a shutdown contact.

Claim 14 is illustrative of the invention and reads as follows:

14. A method of disconnecting passenger conveying systems comprising the steps of:

monitoring functional units of a passenger conveying system with switching elements to detect malfunctions of the passenger conveying system, wherein signals from the switching elements of the functional units are combined to form a safety chain;

supplying signals from the functional units and signals from a drive monitoring unit of at least one drive of the passenger conveying system to at least one pilot control unit;

supplying a shutdown signal, after the step of supplying signals to the at least one pilot control unit, to a shutdown contact of the at least one drive of the passenger conveying system when at least one error is detected by at least one of the functional units and the drive monitoring unit.

The Examiner relies on the following prior art:

Loshbough	3,580,376	May 25, 1971
Sakata et al. (Sakata '653)	5,083,653	Jan. 28, 1992
Iwata	5,107,975	Apr. 28, 1992
Zaharia	5,186,300	Feb. 16, 1993
Sakata et al. (Sakata '256)	5,526,256	Jun. 11, 1996
Zaharia et al. (Zaharia '178)	5,601,178	Feb. 11, 1997
Zaharia et al. (Zaharia '416)	5,708,416	Jan. 13, 1998
Balzer-Apke et al. (Balzer-Apke)	6,230,871	May 15, 2001

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(filed Jun. 05, 2000)

Claims 14-30 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over each one, in the alternative, of Loshbough, Sakata '653, Iwata, Zaharia, Sakata '256, Zaharia '178, Zaharia '416, or Balzer-Apke.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief (Paper No. 18) and the Answer (Paper No. 19) for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Brief along with the Examiner's rationale in support of the rejections and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 14-30. Accordingly, we reverse.

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In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073-74, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

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With respect to the Examiner's 35 U.S.C. § 103(a) rejection of appealed claims 14-30, Appellants assert that the Examiner has failed to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by any of the applied prior art references. After careful review of the applied prior art references, in light of the arguments of record, we are in general agreement with Appellants' position as stated in the Brief.

As indicated by the cases cited supra, the Examiner has at least two responsibilities in setting forth a rejection under 35 U.S.C. § 103. First, the Examiner must identify all the differences between the claimed invention and the teachings of the prior art. Second, the Examiner must explain why the identified differences would have been the result of an obvious modification of the prior art. In our view, the Examiner has not properly addressed his first responsibility so that it is impossible that he has successfully fulfilled his second responsibility.

With respect to appealed independent claims 14 and 26, the Examiner, aside from asserting the existence of the claimed "safety chain" of switches in each of the applied prior art references, has never attempted to show how each of the remaining

claim limitations is suggested by the teachings of the applied prior art. In particular, the Examiner makes no attempt at addressing the specific language of the claims. For example, independent method claim 14 sets forth a specific signal flow involving the functional unit safety chain of switching elements, the drive monitoring unit, the pilot control unit, and the disconnect contact unit while independent apparatus claim 26 has a specific recitation of each of these elements. While the Examiner asserts (Answer, page 3) that "[e]ach of the references cited has the required elements," the Examiner has made no attempt to identify where such elements might exist in the prior art.

Further, rather than pointing to specific information in the applied references that would suggest how they would meet the specific language of the appealed claims, the Examiner has instead merely described a piecemeal similarity involving only the safety chain switches between each of the references and the claimed invention. Nowhere does the Examiner identify any suggestion, teaching, or motivation to modify the applied references, nor does the Examiner establish any findings as to

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the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that would support a proper obviousness analysis. See, e.g., Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996).

In conclusion, since the Examiner has not shown how all of the limitations of the appealed claims are taught or suggested by the applied prior art, a prima facie case of obviousness has not been established. We make the observation that our holding in this case does not mean that a prima facie case of obviousness could not have been made based on the present applied prior art, but only that the Examiner has not made such a prima facie case based on the record before us in this appeal.

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In view of the above discussion, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 14 and 26, as well as dependent claims 15-25 and 27-30, is not sustained. Accordingly, the decision of the Examiner rejecting claims 14-30 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
JOSEPH L. DIXON)	
Administrative Patent Judge)	

JFR/hh

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VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP
P.O. BOX 34385
WASHINGTON, D.C. 20043-9998